

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU

&

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JY AISHTA 1929

TRC.No. 350 of 2002()

TA.353/1996 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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PETITIONER: REVENUE /RESPONDENT

THE DEPUTY COMMISSIONER (LAW)
COMMERCIAL TAXES, ERNAKULAM

BY GOVERNMENT PLEADER FOR TAXES SRI.V.V.ASHOKAN

RESPONDENTS: ASSESSEE/APELLANT

KAVITHA TRADING COMPANY, S.N.PARK ROAD,
KANNUR.

BY ADV. SRI.K.P.DANDAPANI

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD
ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

T.R.C. NO. 350 OF 2002

Dated this the 14th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Since the questions of law raised by the Revenue are substantial questions of law, they require consideration by this Court. Therefore, the delay in filing the revision petition is condoned.

2. The Revenue calls in question the correctness or otherwise of the orders passed by the Kerala Sales Tax Appellate Tribunal, Kozhikode in T.A.No.353 of 1996, dated 13.11.2000, for the assessment year 1993-94.

3. The Revenue has raised the following questions of law for our consideration.

“1) Empty bottles are such for not having suffered tax at any point, is not the finding of the Appellate Tribunal on the issue deleting the tax levied perverse, erroneous and without any authority of law?

2) Is not the sales turnover of empty bottles liable to be taxed in the light of 8 KTR 460?”

4. The questions of law raised by the Revenue are no more debatable in view of the decision of this Court in **M/s.K.Sreedharan & Co. (P) Ltd., Kannur v. State of Kerala** ((2000) 8 KTR 480(Ker)). In the said decision, a Division Bench of this Court has stated as under:

“TAXABILITY – EMPTY BOTTLES OF I.M.F.L.-
HAD NOT SUFFERED TAX AS AN ITEM – I.M.F.L.

SUFFERED TAX AS CONTAINED IN THE BOTTLES –
LEVY OF TAX ON BOTTLES IS IN ORDER – K.G.S.T.
ACT, 1963; SECTION 5(5), SCHEDULE 1, ENTRY 156.

On a reading of the First Schedule to the Act, it appears that prior to 1992-93, sales of empty bottles are taxable as an unclassified item, Entry 156 was introduced to the First Schedule with effect from November, 1992. After introduction of the said entry, the levy of tax therein is at the point of first sale in the State. Empty bottles as such had not suffered tax as an item falling under Entry 156 to the Schedule. IMFL had suffered tax as contained in the containers. There is no distinct sale of liquor and bottles separately. That being the position, levy of tax on the bottles is in order.”

5. The law declared by this Court is binding on us.

6. Respectfully following the observations made in the aforesaid decision, this revision petition requires to be allowed and it is allowed. The questions of law raised by the Revenue are answered in favour of the Revenue and against the assessee.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU,C.J. &
K.T.SANKARAN, J.

T.R.C.NO. 350 OF 2002

JUDGMENT

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